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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ANTHONY ARRON ALLEN, Defendant and Appellant.	G052966 (Super. Ct. No. 13CF0994) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Steven D. Bromberg, Judge. Affirmed.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric Swenson and Barry Carlton, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

This postconviction and sentencing appeal by Defendant Anthony Arron Allen concerns an in camera review of documents conducted by the trial court in conjunction with a Pitchess[1] motion made by defendant pursuant to Evidence Code section 1043. Defendant requests that we independently review the documents reviewed by the trial court to determine whether it properly determined there was no disclosable information. Our independent review reveals no error, and we affirm the judgment.

I

FACTS

This case arises out of a series of alleged confrontations that defendant had with employees of an AM/PM Mini Market in which defendant allegedly stole beer and threatened the AM/PM employees with a cane. After the last alleged confrontation, one of the AM/PM employees called 9-1-1, and Santa Ana Police Department officers responded and eventually arrested defendant.

Prior to trial, defendant filed a *Pitchess* motion, seeking discovery of certain records from the personnel files of two Santa Ana police officers involved in defendant's arrest — Officer Adam Aloyian and Officer Frank Aragon. The trial court found it appropriate to do an in camera review of the potentially responsive documents to determine if any were discoverable, in full or in part. Based on its in camera review, the court concluded there was nothing to disclose.

A jury convicted defendant of one count of making criminal threats (Pen. Code, § 422, subd. (a)),[2] two counts of second degree robbery (§§ 211, 212.5, subd. (c)), and one misdemeanor count of vandalism (§ 594, subds. (a), (b)(2)(A)). With respect to all counts except the vandalism count, the jury found defendant had personally used a deadly or dangerous weapon, within the meaning of section 12022, subdivision (b)(l).

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[1] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

[2] All further statutory references are to the Penal Code.

On June 10, 2015, the trial court sentenced defendant to a total of nine years in prison. On December 28, 2015, we granted defendant's petition to file a late notice of appeal, and defendant filed a notice of appeal approximately one week later.

II

DISCUSSION

The sole matter raised by defendant on appeal is a request that we independently review the documents that the trial court reviewed in camera in conjunction with Defendant's *Pitchess* motion to determine whether the court erred in finding that no documents, or portions thereof, were discoverable. Respondent does not oppose the request.

Our review of the trial court's Pitchess motion determination is for an abuse of discretion. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1228 (*Mooc*).) In *Mooc*, the Supreme Court held that in order to preserve the defendant's ability to obtain appellate review of the denial of a *Pitchess* motion, the trial court should make a record of the documents it reviewed in camera, either by photocopying the documents, preparing a written list of the documents it reviewed and/or stating on the record the documents it reviewed. (*Id*. at p. 1229.) Discoverable information generally includes limited information from a peace officer's confidential personnel records that is potentially relevant to the defense's case — either a proposed defense or the impeachment of an officer. (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021-1022.)

We have independently reviewed the sealed reporter's transcript of the in camera proceeding, as well as the sealed unredacted version of defendant's motion. During the in camera proceeding, the custodian of records was placed under oath and then described to the trial court the general nature of the "'potentially relevant'" documents contained in the officers personnel records and the information included therein. (*Mooc, supra*, 26 Cal.4th at p. 1226.) The court evaluated the documents and came to its conclusion. We are satisfied that the court did not abuse its discretion by

finding there was no information to disclose. (*People v. Byers* (2016) 6 Cal.App.5th 856, 869.)

III

DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.

BEDSWORTH, Acting P.J., Concurring:

The majority opinion is completely correct on the law, so I have signed it. I write separately only because I cannot agree with the statement that, "We are satisfied that the court did not abuse its discretion by finding there was no information to disclose."

I am not satisfied that is the case. It's not that I think the court *did* abuse its discretion. It's just that I have no information one way or the other on that point. Other than my respect for the bonafides of the trial court, there is nothing which would support a conclusion there was no information to disclose here.

But for reasons beyond my ken, our Supreme Court has repeatedly held that *Pitchess* motions are unreviewable. We are allowed only to decide whether the court held a hearing in which it looked at the records in issue. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1228.) The correctness of its analysis of those records is – unique in the criminal law of this state – insulated from appellate review.

I have written before unsuccessfully about this issue so I confine myself to five paragraphs of concurring threnody, written in accordance with the adjuration of the great legal scholar Jimmy Valvano: "Don't give up . . . don't ever give up."

I would have actually looked at the records.

BEDSWORTH, ACTING P. J.